

RACING APPEALS TRIBUNAL

QUEENSLAND

NOTICE OF DECISION

APPEAL NO: RH002-08

DATE: 2 September 2008

APPELLANT: Mr Martin Knibbs, Chairman of Stewards and others for and on behalf of the Stewards of Harness Racing Queensland

RESPONDENT: Mr Martin Hanrahan

APPEAL FROM: Decision of the Appeal Committee to uphold an Appeal by Trainer Martin Hanrahan for a breach of Rule 190(1)

BREACH OF RULE: R190(1)

DECISION: Appeal dismissed.

APPEARANCES: PJ Callaghan SC instructed by Schweikert Lawyers appeared on behalf of the Appellant.

JE Murdoch SC appeared on behalf of the Respondent.

REASONS FOR TRIBUNAL'S DECISION

Mr Leo Williams AO - Chairman
Mr Brock Miller - Deputy Chairman
Mr Dennis Standfield - Member

The Respondent Mr Martin Hanrahan is a Licensed Trainer and on 26 April 2008 his mare "Miss Bulle" raced at Albion Park and was placed fifth. There was a pre race urine sample taken from the horse and on 14 May 2008 the Racing Science Centre advised the Chairman of Stewards Mr Martin Knibbs of a discrepancy in the sample stating it was shown to contain Phenylbutazone and Oxyphenbutazone.

A Stewards Inquiry was held on 20 and 30 June 2008 with the Stewards finding that the Respondent breached Australian Harness Racing Rule 190(1) which states:

190(1) A horse should be presented for a race free of prohibited substances.

The penalty imposed by the Stewards was a suspension for three months of the Respondent's licence and a fine of \$2,000.

The Respondent pleaded not guilty at the Stewards Inquiry and his appeal to the Appeals Committee of Harness Racing Queensland was heard on 21st and 25th July 2008.

The Appeals Committee upheld the Appeal and did on 29 July 2008 publish reasons for its decision. The Tribunal commends the Appeals Committee for its detailed reasons. So often the Tribunal receives so little information as to the reasons of an Appeals Committee either in the Harness Racing Code or the Thoroughbred Code it is difficult to understand how a decision was reached. This is not the case in this appeal.

The basis of the Appeals Committee finding was that the Record of Sample Custody and Despatch document (Exhibit B of the Stewards Inquiry) was considered by the Appeals Committee to not be completed in accordance with the requirements of the "Collection Procedures" and as such the analysis certificates issued were inadmissible and should not have been relied upon by the Stewards.

Written submissions were presented to the Tribunal by both Mr Callaghan and Mr Murdoch for which the Tribunal is grateful.

The finding of a breach of the Rule by the Stewards is based on their acceptance of the certificates of analysis provided by the Racing Science Centre and the Australian Racing Forensic Laboratory in New South Wales. Indeed because of Rule 191(3) once the Stewards accepted those certificates that rule provides that is "... conclusive evidence ... that a horse was presented for a race not free of prohibited substances".

The basis of the Respondent's submissions to the Stewards Inquiry and to the Appeals Committee was that as the sampling procedures and protocols required to be observed for the taking of the sample from the horse were not correctly followed then there cannot be a breach of the presentation rule. While not accepting that there was any breach of the sampling procedures and protocols, the Appellant submits that even if there was then there is still a requirement for a licensee to establish the certificates do not have evidentiary value as required under Rule 191(7). That rule states:

Rule 191:

(7) Notwithstanding the provisions of this rule, certificates do not possess evidentiary value nor establish an offence, where it is proved that the certification procedure or any act or omission forming part of or relevant to the process resulting in the issue of a certificate, was materially flawed.

For the Tribunal to consider these matters it is necessary to set out the relevant facts relating to the allegations of non compliance with the required sampling

procedures and protocols. These facts are summarised in paragraphs 4 and 5 of the Respondent's submissions being:

- “4. The Record of Sample Custody and Dispatch form relevant to the collection of the sample, shows, on its face, that more than one hand had played a part in filling in the blanks in box 3 of the form. Namely, the numerals of the tag number appear to be written by a different hand to the other entries in box 3.
5. When the sample arrived in Sydney at the Australian Racing Forensic Laboratory, it was found, on opening, to have an unused blue seal inside the security bag.”

For convenience these matters will be referred to as the “Different Hand Writing” and the “Blue Seal”.

Different Hand Writing

It is clear that the hand writing in the boxes that were required to be completed for Section 3 of the Record of Sample Custody and Dispatch form in that the number “017672” is not the hand writing of Mr Jon Peterson who completed and signed the other requirements of Section 3 and also Section 4 being Storage Of Samples By ARCB. Indeed at the Appeal Committee Hearing there was a request made as to who completed the number “017672” but the Appellant did not provide evidence in that regard. Furthermore the Tribunal also suggested that this may be relevant but again the Appellant was silent in providing that information.

What is in issue is whether the completion of Section 3 by different persons is relevant. The Respondent's submission is that it is essential as there is non compliance with the Procedures published by the Racing Animal Welfare Integrity Board (“the Procedures”).

The Tribunal has on numerous occasions found that where there is no compliance with the Procedures the Certificate of Analysis should not be relied upon with its most recent decision being Wakefield v Queensland Racing RT019-08 of 27 June 2008. The relevant part of the Procedures relied upon by the Respondent of non compliance is under No. 5 of Part 4 of the Procedures which states:

“5. An Authorised Representative of the Control Body or integrity officer is responsible for:

- ...
- ...
- completing Section 3 of the “Record of Custody and Dispatch Document for Protocol A;
- ...”.

Section 3 of the Record of Custody and Dispatch Document states:

3. SAMPLES RECEIVED BY ARCB

The above samples were received, kept secure and examined to ensure all seals were intact and then the security bag sealed with a **blue** security tag at.

It is clear that the purpose for completing Section 3 is not only to ensure that one particular person is responsible for stating that samples were “received, kept secure and examined” but that did in fact occur. While the insertion of numbers in a different hand writing may seem minor, in the context of the evidentiary value of the form it is an important matter. There is no doubt due to the strict and detailed steps set out in the Procedures that completion of Section 3 was intended to be done by the one person who can confirm that the samples in

Section 3 were “received, kept secure and examined”. The Tribunal does find that this is non compliance with the Procedure.

A Blue Tag

While the Respondent states that the Different Writing is its primary submission for non compliance with the Procedures and the Tribunal has found for the Respondent in that regard there is also the Blue Tag issue. While there was an unused Blue Tag 014442 loose in the Dispatch Security Bag containing the sample for confirmatory analysis by the Australian Racing Forensic Laboratory, the Tribunal cannot see how that aspect is non compliant with the Procedures. The evidence from the Stewards Inquiry is clear that there is a refurbishment of either used bags or the bags are unused. With the Blue Tag being intact then the bag would have been unused and as stated by the Manager of the Racing Science Centre Mr Roberts at the Stewards Inquiry (page 78 from line 14):

“MR ROBERTS: If the blue tag is intact, yes. That would indicate that it has been a bag that has been unused in the past and has been broken down and then it’s been available as a pool of available empty bags to be used for other purposes, including dispatch for referee process.”

The Tribunal does not find any breach of the Procedures by the blue unused tag being undiscovered when it was used for transferring the confirmatory sample for analysis.

While the Tribunal has found against the Appellant with respect to their being compliance with the Procedures, the primary argument of the Appellant is that even if there is conceded that there has been non compliance the Respondent

would still be obliged to comply with the requirements of Rule 191(7) and that it must be proved that the Certificates of Analysis were materially flawed. The Appellant's argument in this regard is set out in paragraphs 8 to 12 of the Appellant's submissions which are:

- “8. The Racing Act 2002 provides, in Section 143(3), that a Control Body must take and deal with things for analysis under the relevant procedures. The Act does not, however, provide for any sanction or consequence which might flow from a breach of that provision. Specifically, it makes no provision for any impact that non compliance might have upon the admissibility of evidence about the material analysed.
9. This is undoubtedly because the question of admissibility is exclusively dealt with under the Australian Harness Racing Rules, and specifically in Rule 191.
10. Relevantly, Rule 191 provides that, in a situation such as this, the issuing of two Certificates¹ as to the presence of a prohibited substance is conclusive evidence of that which must be proven.
11. The law knows no higher state of evidentiary certainty than that which is regarded as “conclusive”. With one qualification, there is no relevant discretion as to whether such evidence should be admitted or acted upon. Rule 191(3) does not allow for second guessing, argument, or philosophical debate about the nature of strict liability. The one qualification on those propositions, and the only manner in which the operation of Rule 191(3) can be limited, is to be found in Rule 191(7).
12. Specifically, Rule 191(7) allows for the fact that the certification procedure (or any act or omission forming part of or relevant to the process resulting in the issue of a Certificate) may be examined with a view to casting doubt upon the evidentiary value of the Certificates. But in order for this Rule to have any operation whatsoever, there must have been a flaw in the procedure. And it is a flaw which must be:
 - (a) proven and
 - (b) material.”

¹ From different laboratories

While it is correct that the Racing Act 2002 does not state the consequences of failure to deal with the failure of non compliance and there is Australian Harness Racing Rule 191(7) the Tribunal does not accept that non compliance of the Procedures means Rule 191(7) is relevant. To do so would mean that the Appellant can disregard compliance with the Procedures in any way it feels fit and then simply state the onus is on the Appellant to prove that such non compliance materially flaws what is stated in the certificates. The Tribunal is of the view that once it is established that there is non compliance with the Procedures then there is no certificates of analysis that can be relied upon to sustain a breach of the rule.

While reliance on the certificates under Rule 191(3) is the most common basis of breaches of the presentation rule, it is noted that Rule 191(6) does not preclude breaches of the rule being established in other ways. These “other ways” could be by way of admissions but this is not the case here with the Appellant has consistently denied any knowledge of the matter. It is the Tribunal’s view that there is no need to consider Rule 190(7) of the Australian Harness Rules. Section 143(3) of the Racing Act 2002 states:

Section 143(3)

- (3) *If the results of the analysis are to be used by the control body for a purpose other than for research or survey purposes, the control body must take and deal with the thing for analysis under the integrity board’s procedures mentioned in section 115(3) as in force at the relevant time.*

That wording is clear in that it states that if the results are to be used the Control Body must take and deal with the thing for analysis under the Integrity Board’s

procedures. The Stewards can only use the results of analysis if they had complied with the Procedures.

The Appeal is dismissed.

Mr Leo Williams AO - Chairman

Mr Brock Miller - Deputy Chairman

Mr Dennis Standfield
Member